

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

KATHLEEN COCHRAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 09-03010-CV-S-SWH
	)	
WHISPER CREEK LOG HOMES OF	)	
THE OZARKS, LLC., et al.,	)	
	)	
Defendants.	)	

ORDER

On January 23, 2012, plaintiff was ordered to show cause why this action should not be dismissed for failure to prosecute. In response, on February 7, 2012, plaintiff filed a Motion for Default Judgment against defendant Extreme Home Builders, Inc. (doc #94) and Plaintiff's Response to Show Cause Order (doc #95). In her Response to Show Cause Order, plaintiff states:

5. Defendant [sic] has filed with the Court on this date her Motion for Default Judgment against Extreme Home Builders as it has failed to appear and defend this matter.
6. It is anticipated that the remaining defendant, Whisper Creek Log Homes of the Ozarks, LLC will not provide further defense in this matter and the case can be brought to a swift conclusion.
7. Plaintiff respectfully submits that she has demonstrated good cause for the Court to allow this matter to remain pending so she may bring it to a close with judgments against the remaining defendants.

(doc #95 at 2)

First, with respect to plaintiff's Motion for Default Judgment against defendant Extreme Home Builders, Inc. (doc #94), the Court notes that there is no Proof of Service on file to show that defendant Extreme Home Builders, Inc. has even been served in this action. Thus, the request for

default judgment against defendant Extreme Home Builders, Inc. must be denied.

Next, at a status teleconference held on November 22, 2011, plaintiff's counsel advised that he intended to file a motion for default judgment and motion to dismiss defendant Richard Sheid because Mr. Sheid had filed for personal bankruptcy. To date, no motion to dismiss defendant Sheid has been filed.

Finally, as set forth above, in her Response to Show Cause Order filed on February 7, 2012, plaintiff states that, "It is anticipated that the remaining defendant, Whisper Creek Log Homes of the Ozarks, LLC will not provide further defense in this matter and the case can be brought to a swift conclusion." The Court notes that there are two other defendants remaining in this action, Whisper Creek Log Homes of the Ozarks, LLC, and Ozark Mountain Log Homes, LLC. The time for plaintiff to bring this case to a conclusion against these defendants has now passed. Plaintiff has failed to request a default judgment against either of these defendants. Instead, plaintiff filed a Motion for Default Judgment against the one defendant for which she had no service.

Based on the foregoing, it is

ORDERED that plaintiff's Motion for Default Judgment (doc #94) is denied. It is further ORDERED that plaintiff's case is dismissed for failure to prosecute.

/s/ Sarah W. Hays  
SARAH W. HAYS  
UNITED STATES MAGISTRATE JUDGE